R.J.B. Knits, Inc. *and* Local 149, International Ladies' Garment Workers Union, AFL–CIO. Case 22–CA–18172

October 6, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND OVIATT

On April 27, 1992, Administrative Law Judge Steven B. Fish issued the attached decision.[1] The Respondent filed exceptions and a supporting brief, and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order, as modified below in accordance with the May 4, 1992 errata.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, R.J.B. Knits, Inc., Perth Amboy, New Jersey, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Substitute the following for paragraph 2(c).

''(c) Notify the Union in writing that its agents' access to the Respondent's premises and employees has been restored pursuant to the terms of article XXI of its collective-bargaining agreement which expired on December 31, 1991.''

2. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT withdraw recognition from, or refuse to bargain collectively with, Local 149, International Ladies' Garment Workers Union, AFL–CIO, as the exclusive bargaining representative of employees in the following appropriate unit:

> All non-supervisory production, maintenance, packing, shipping, and trucking employees employed by us, including regular and trial period employees, but excluding office clerical and managerial employees, guards and supervisors as defined in the Act.

WE WILL NOT deny agents and representatives of the Union reasonable access to our premises and our employees.

WE WILL NOT unilaterally cease to make contributions to the Union's fringe benefit funds as provided in the collective-bargaining agreement between the parties which expired on December 31, 1991.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, on request, bargain collectively with the Union as the exclusive bargaining representative of our employees in the aforesaid unit and, if an understanding is reached, embody the same in a signed agreement.

WE WILL notify the Union in writing that its agents' access to our premises and employees has been restored pursuant to the terms of article XXI of our collective-bargaining agreement which expired on December 31, 1991.

WE WILL make all fringe benefit contributions as provided in the collective-bargaining agreement which expired on December 31, 1991, and make whole the unit employees by reimbursing them with interest for any losses they may have suffered as a result of our failure to make the various fund contributions.

R.J.B. KNITS, INC.

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[1] The judge issued an errata and a supplemental errata on May 4 and 19, 1992, respectively.

[2] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In fn. 3 of his decision, the judge found that 31 of the 33 employees hired by the Respondent between July 26, 1989, and the date of the instant hearing, April 1, 1992, did not remain employed for more than a year. The record (R. Exh. 1), however, shows that there were 29 employees who did not remain employed for more than a year, rather than 31. This matter does not, in any event, affect our result.

In the fourth paragraph of his Analysis section, the judge found that the lack of union membership on the part of any of the unit employees did not serve to legitimize the Respondent's withdrawal of recognition from the Union. We agree with the judge. In doing so, however, we do not rely on his particular factual finding in that paragraph that most of the unit employees were still probationary employees at the time of withdrawal of recognition. Although there is no specific exception to this finding, we find that it is not supported by a preponderance of the evidence.

Julie Kaufman, Esq., for the General Counsel.
Sanford Browde, Esq. (Krieger & Browde), of Jersey City, New Jersey, for Respondent.
Jesse Strauss, Esq. (Reitman, Parsonnet & Duggan), of Newark, New Jersey, for the Charging Party.

DECISION

STEVEN B. FISH, Administrative Law Judge. Pursuant to charges and amended charges filed by Local 149, International Ladies Garment Workers Union, AFL–CIO (the Union), the Regional Director for Region 22, issued a complaint and notice of hearing on January 30, 1992, alleging in substance that R.J.B. Knits, Inc. (Respondent) has violated Section 8(a)(1) and (5) of the Act, by in substance failing and refusing to meet and bargain with the Union. Thereafter, on February 28, 1992, the Regional Director issued a first amended complaint, which added allegations that Respondent withdrew recognition from the Union, failed and refused to abide by the terms of its collective-bargaining agreement by failing and refusing to make pension and health and welfare contributions, and denied union representatives access to Respondent's employees at its facility, all in violation of Section 8(a)(1) and (5) of the Act.

The trial with respect to the above was held before me on April 1, 1992, in Newark, New Jersey. Briefs have been filed by General Counsel and Respondent and have been carefully considered.

Based on my review of the entire record,[1] including my observation of the witnesses, I make the following

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

Respondent is a corporation with an office and place of business in Perth Amboy, New Jersey (Respondent's facility), where it is engaged in the assembly of women's garments. During the past year, Respondent sold and shipped from its facility products, goods, and materials valued in excess of $50,000 directly to points outside the State of New Jersey. It is admitted and I so find that Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

It is also admitted and I so find that Respondent is a labor organization within the meaning of Section 2(5) of the Act.

II. FACTS

Respondent's president and chief executive is Al Carpenito. His daughter Judy Carpenito is employed by Respondent as a more or less office manager and assistant to her father.

From 1963 to 1988, Al Carpenito had been a partner in a firm named Kent Knitting Mills in Jersey City, New Jersey. During that period of time, Kent had been a party to a collective-bargaining agreement with the ILGWU. In 1988, Carpenito split with his partner and formed Respondent. At that time, he voluntarily recognized the Union as the collective-bargaining representative of Respondent's employees, and negotiated a contract with the Union covering such employees.

The last collective-bargaining agreement between the parties was effective by its terms from January 2, 1989, to December 31, 1991. The agreement contains a union-security clause which requires membership in the Union as a condition of employment on and after 30 days of employment, but not before completion of the trial period. The trial period for employees varies from 30–90 days, depending on the classification of employees.

The agreement provides for payment by Respondent into the Union's Health and Welfare, Retirement, and Health Services Funds of specific amounts, on behalf of all unit employees, which change on various dates from January 1, 1989, to December 15, 1991.

The agreement also provides that the Union will have access to the plant for the purpose of taking up employee complaints, and ascertaining whether the terms of the agreement are being complied with. However, the agreement further states that in the event the union representative wishes to talk to any individual employee concerning a complaint or grievance, an appropriate place will be designated for such discussion so as not to interfere with production.

Respondent has employed from four to nine employees in the bargaining unit over the course of its existence. They have consisted of floorworkers and knitters. Respondent has also employed from one to three mechanics who were not part of the bargaining unit. Most of Respondent's employees have been knitters, who under the contract have a 90-day probationary period because of the extensive training that is required for this position. Respondent experiences significant turnover in this position because of the difficulty of training employees to master the job. In that connection, Respondent's records reveals that for the period from July 26, 1989, to the date of the hearing, it has employed 33 different employees, many of whom did not last the 90-day probationary period,[2] with most of such employees being employed for less than a year.[3]

The agreement also provides for a checkoff of union dues, on execution of checkoff authorizations. As of January 4, 1991, and March 2, 1991, the Union was receiving dues from six knitters employed by Respondent. As of May 3, 1991, the number was reduced to three. The other three employees left the employ of Respondent in the interim for unspecified reasons. The number of employees who had their dues checked off was further reduced to two as of July 1991, and to one employee Juan Meri, from August 1991 to October 1991. Meri, in fact, left Respondent's employ voluntarily on October 18, 1991. At the time, Meri left Respondent employed six knitters, including Meri. They were with their starting dates next to their name, as follows:

Alfredo Quezadas	2/13/91
Hector Vargas	5/2/91
Eduardo Picazo	7/5/91
Carlos Perez	7/30/91
Saul Martinez	10/2/91

[1] While every apparent or nonapparent conflict in the evidence may not have been specifically resolved below, my findings are based on my examination of the entire record, my observation of the witnesses' demeanor while testifying, and my evaluation of the reliability of their testimony. Therefore, any testimony in the record which is inconsistent with my findings is discredited.

[2] There are 16 employees who fall into that category.

[3] Out of the 33 employees employed by Respondent, 31 were not employed for over a year.

On October 24, 1991, Respondent hired Felix Perez (apparently to replace Meri), who was also employed as a knitter.

On October 2, 1991, the Union by letter notified Respondent that it desired to meet with Respondent to bargain concerning the terms of a new contract, which was about to expire on December 31, 1991. During the month of October 1991, Carpenito did not respond to the Union's letter, because he was thinking about what he could afford to pay when he signs a contract with the Union.

After employee Meri left, and was apparently replaced by Felix Perez, on November 24, 1991, Respondent employed six employees in the bargaining unit. None of these employees were members of the Union. Nor had the Union representative ever approached these six employees about joining the Union.

In early November, Rosario Charita Machin, a representative of the Union visited Respondent's facility. She spoke to all six employees working on that day. According to Machin, she gave authorization and checkoff cards to only two employees, since these were the only two who had passed their probationary period. However, she told all the employees that the Union and Respondent were parties to a contract that required all the employees to become members of the Union once they completed their probationary periods. She also told them about some of the benefits that they would receive under the contract, and discussed the waiting periods involved for some of these benefits. Additionally, in response to a question from one of the employees as to what would happen if he did not become a member, Machin replied that Respondent is obligated under the contract to dismiss such an employee. The two employees to whom Machin gave authorization cards to, told Machin that they would fill out the cards as requested.

According to Machin, at that point, Carpenito asked her and she agreed to extend the probationary period of one of the two employees to whom she gave cards. Carpenito denies asking that Machin agree to extend the probationary period of any employee. I do not deem it necessary to resolve this conflict in testimony.

After Machin left the premises, employees Alfredo Quezades and Carlos Perez approached Respondent's mechanic Manuel Feliciano. Feliciano was by far the most senior of Respondent's employees, and in fact was employed with Respondent for the entire time since it began in 1988, as well as being an employee of Carpenito's various companies for 25 years. Feliciano is also fluent in Spanish, which is apparently the only language that the employees speak.

Quezadas and Perez told Feliciano that the lady from the Union had told them that they had to join the Union or they couldn't work for Respondent, and asked Feliciano how to fill out the cards. Feliciano explained to them how to do it. They then asked Feliciano if it was true as told to them by the lady from the Union, that they had to join the Union or they couldn't work for Respondent. Feliciano responded that it was up to them whether they wanted to join the Union. The employees at that point told Feliciano that they didn't want to join the Union, and they were going to quit. They added that they didn't want to pay dues and if they had to join the Union and pay dues, they were going to quit.

Later on that same day, while at lunch with all six of Respondent's employees, Feliciano and the employees again discussed the Union. Employee Eduardo Picazo said that he had problems and experiences with the Union before, and he also would rather quit than join the Union. All the other employees in the shop (six in total) told Feliciano that they didn't want to pay union dues because the Union takes their money and doesn't do anything, and added that they would rather quit their job than have to join the Union.

After these conversations, Feliciano spoke to Al Carpenito. Feliciano informed Carpenito that Charita (Machin) had given cards to employees to fill out and told them that if they didn't fill out the cards and join the Union, they couldn't work. Feliciano added that all six of Respondent's employees had told him that they didn't want to pay dues or become members of the Union, and that all of the employees were going to quit if they were forced to join the Union.

Subsequent to this conversation with Feliciano, Carpenito contacted an attorney. As a result of his discussions with his attorney, Carpenito decided not to negotiate with the Union, because he felt that the employees didn't want the Union, and if he signed a new contract, they would quit.

On November 25, 1991, Harold Krieger, Respondent's attorney, sent a letter to the Union, reading as follows:

> Please be advised that we are the attorneys for RJB Knitting Mills, Inc. Your letter of October 21, 1991 has been referred to this office for our attention.
>
> As you are aware, there are only six employees in this plant and we have been informed that they are not members of the Union. The collective bargaining agreement expires on December 31, 1991. Under the circumstances it would be a violation of law to enter into any agreement with the Union on their behalf. If there are any questions, please do not hesitate to communicate with this firm.

By letter dated December 2, 1991, Jesse Strauss, attorney for the Union, responded to Krieger's letter of November 25, 1991. Strauss' response is as follows:

> I am counsel to the New Jersey Region of the International Ladies' Garment Workers' Union, and I have been asked to respond to your letter of November 25, 1991 regarding RJB Knitting Mills.
>
> In view of the labor background which I understand you have, I am quite surprised at the position you have taken in this letter.
>
> A collective bargaining agreement is in effect between the ILGWU and RJB Knitting Mills. The only reason the 6 employees are not members of the Union is because they are currently in a probationary period, a status which is clearly set forth in the collective bargaining agreement. Without question, they are members of the bargaining unit.
>
> Accordingly, the bargaining obligation of the Employer has not changed one wit. I would like to know what violation of law would exist upon entering into an agreement with the Union on behalf of these employees.
>
> Unless we are notified at once of the willingness of a representative of the firm to meet with the Union to commence negotiations, an unfair labor practice charge will be filed with National Labor Relations Board and

all other actions will be taken to the full extent of the law.

Neither Krieger nor Respondent responded to the Strauss' letter, and there was no further contact between the Union and Respondent until after the contract expired on December 31, 1991. Respondent continued in force all terms and conditions of employment contained in the contract until December 31, 1991, including the payments to the Union's funds. In that connection, Respondent made its final payment to the Union's fund on January 20, 1992, which under the terms of the contract covered the month of December 1991.

In early January 1992, Machin went to Respondent's facility.[4] She spoke to Judy Carpenito and asked to speak to the workers in the shop. Judy Carpenito replied that she had been instructed by her father not to let Machin inside the shop, because the shop was nonunion and the workers were nonunion employees.[5] Machin did not reply, and left the premises.

She then reported the situation to George Benson, the Union's assistant district manager. He told Machin that he would try to arrange a meeting with Carpenito, whom he knew from prior dealings. Benson was able to set up such a meeting for January 10, 1992. On that date, Benson and Machin met with Al as scheduled. Benson and Carpenito began by renewing their acquaintance and briefly discussing their prior relationship. Benson then asked Carpenito what was going on, adding that they never had a problem before. Benson also asked if there was any economic reason or problem why he wouldn't sit down with the Union and talk about a contract. Carpenito replied that it wasn't up to him, it was up to his employees. Carpenito added that the employees do not want the Union, and that he was not going to sign a contract and lose all his people. Benson responded that the Union had a contract with Respondent, and that it was obligated to continue negotiations with the Union for a new agreement. Carpenito continued to insist that his employees did not want the Union, and asserted that his attorney had sent a letter explaining Respondent's position to the local office. Carpenito also informed Machin that he had no objections to her talking to the workers to see if they wanted to become union members, but it had to be done away from the premises and not during working hours.

There were no subsequent contacts between the parties with respect to the matter of union recognition or bargaining.

As noted, Respondent made its last payment to the Union's funds on January 20, 1992, to cover December 1991. Thereafter, Respondent ceased payments into the funds. Insofar as the record discloses, Respondent made no other changes in terms and conditions of employment of its employees.

On January 28, 1992, Respondent's attorney sent to the Region a statement of position in response to the Union's charge, which had been filed on December 16, 1991. The position made no reference to the fact that employees had specifically indicated to Respondent, through Feliciano or otherwise, their desires as to union representation or union membership. The document relied on the fact that as of the date the contract expired, Respondent did not employ any members in the bargaining unit, as well as the fact that most of Respondent's workers were unskilled, nonnaturalized aliens who resign prior to passing their probationary period. Therefore, Respondent asserted that it had a good-faith doubt that the Union represented a majority of its employees.

My findings above are based on my overall assessment of the credibility of the witnesses, of whom I found Carpenito to be most believable. He impressed me as a sincere small businessman trying to run his business with the least possible controversy, with absolutely no antagonism or animus towards the Union. Indeed, the record reveals that he had a long harmonious relationship with the Union when he was associated with another company and, more importantly, he voluntarily recognized the Union, as the representative of Respondent's employees, before he even had hired any employees.

In these circumstances, I find no basis for General Counsel's contention that the testimony of Feliciano and Carpenito concerning the conversations with employees was contrived or untruthful. I have considered the fact that the letters from Respondent's attorney to the Union and to the Region, contain no reference to these conversations, but rely primarily on the lack of union membership of employees as a basis for the refusal to bargain. However, while the letters from Respondent's attorney should have been more carefully and accurately worded, I believe that they do not substantially detract from the credibility of Carpenito and Feliciano. I simply do not believe that they would or could have made up the story of employee dissatisfaction with the Union, as contended by General Counsel.

On the other hand, I found Machin's testimony to be often vague, imprecise, and uncertain, and therefore I credit the testimony of Carpenito and Feliciano where it conflicts with that of Machin, particularly whether she visited the facility on December 30, 1991, as she contends.

III. GENERAL COUNSEL'S MOTION TO REOPEN THE RECORD

General Counsel filed a motion dated April 15, 1992, along with its brief, requesting that the record be reopened to include ''newly discovered evidence.'' General Counsel seeks to introduce the brief filed by Respondent in a related district court 10(j) proceeding, plus attached affidavits of Al Carpenito and Manuel Feliciano. General Counsel asserts that these affidavits plus a statement in the brief by its counsel, contradicts and impeaches the testimony given by these witnesses at the trial held before me on April 1, 1992. Since General Counsel did not receive these documents until April 2, 1992, she argues that they constitute previously unavailable and newly discovered evidence.

However, Section 102.48(d)(1) of the Board's Rules and Regulations requires that for the evidence to be admissible, a showing must be made that the evidence would require a different result. See also *Arthur Young & Co.*, 291 NLRB 39 fn. 1 (1988); *Contemporary Guidance Services*, 291 NLRB 50 fn. 2 (1988). Here as detailed below, as I have found that

[4] While Machin testified that this visit occurred on December 30, 1991, I credit the mutually corroborative testimony of Feliciano and Al Carpenito that the plant was closed the last 2 weeks of December 1991. Therefore, I conclude that the visit took place in early January 1992.

[5] In past years, when Machin went to the shop, she would ask Judy Carpenito for permission to speak to employees, and Carpenito would routinely grant such permission without exception and without conditions.

Respondent has violated Section 8(a)(1) and (5) of the Act, the introduction of such evidence would not require a different result. Moreover, I would add that because, as I outlined above, I found Carpenito and Feliciano to be extremely candid and credible witnesses, even had I received the proffered evidence, my credibility findings as set forth would not be altered.

Accordingly, I shall deny General Counsel's motion to reopen the record, and shall not receive the documents in evidence.

IV. ANALYSIS

Whether a union is certified or voluntarily recognized, it enjoys a rebuttable presumption of majority status on the expiration of a collective-bargaining agreement. *Cobb Theatre*, 260 NLRB 856, 859 (1982); *Pioneer Inn Associates*, 228 NLRB 1263 (1977), enfd. 578 F.2d 835 (9th Cir. 1978). During the terms of a collective-bargaining agreement, a union enjoys an irrebuttable presumption of majority status. Therefore, during the term of a collective-bargaining agreement, an employer may not withdraw recognition from a union, nor make unilateral changes in terms and conditions of employment of its employees. *W. A. Krueger Co*., 299 NLRB 914 (1990); *Sisters of Mercy Hospital*, 277 NLRB 1353, 1354 (1985). However, within a reasonable time prior to the expiration of a collective-bargaining agreement, an employer can lawfully announce to a union that it does not intend to negotiate a new agreement, and rebut the presumption of majority status, if it can demonstrate that on the date of withdrawal, and in a context free of unfair labor practices, that the union in fact has lost its majority status, or that the withdrawal was predicated on a good-faith and reasonably grounded doubt, supported by objective considerations, of the Union's majority status. *Burger Pits, Inc*., 273 NLRB 1001 (1984); *Abbey Rents*, 264 NLRB 969 (1982). In such circumstances, an employer may then lawfully implement unilateral changes at the expiration of the contract. *Burger Pits*, supra; *Bennington Iron Works*, 267 NLRB 1285 (1985). It is important to emphasize that a showing of reasonably grounded doubt ''requires more than an employer's mere assertion of it, and more than proof of the employer's subjective frame of mind. The assertion must be supported by objective considerations, that is, some substantial and reasonable grounds for believing that the Union has lost its majority status.'' *United Supermarkets*, 214 NLRB 958 (1974); *Terrell Machine Co*., 173 NLRB 1480 (1969), enfd. 422 F.2d 1088 (4th Cir. 1970); *Celanese Corp*., 95 NLRB 664, 672 (1951).

In applying the above-cited principles to the instant case, it is apparent that Respondent has during the term of the contract, done nothing more than announce to the Union that it will not bargain with it for a successor contract. Respondent did not withdraw recognition from the Union at that time, nor did it make any unilateral changes during the term of the contract. While the complaint alleges an unlawful unilateral change on December 30, 1991, by denying access to union representatives, I have not credited Machin's testimony that she was denied access to employees on that date. Accordingly, I shall recommend dismissal of that allegation of the complaint. However, it is not in dispute that Respondent made unilateral changes after the expiration of agreement by ceasing to make payments to the Union's funds, denying union representatives access to employees, and by withdrawing recognition from the Union as the collective-bargaining representative of its employees. The legality of all of these actions, as well as Respondent's ''anticipatory withdrawal of recognition'' in November 1991, is determined by whether Respondent had a reasonably grounded doubt based on objective considerations of the Union's majority status.[6]

The objective considerations that Respondent relies on to support its assertion of a reasonably based doubt of the union's majority status, consists of the fact that none of the employees were members of the Union, plus the statements of all six employees related to Carpenito by employee Feliciano, that these employees would rather quit than be forced to join the Union or pay dues to the Union.

The fact that none of Respondent's employees were in fact union members provides no support for Respondent's position, particularly where as here most of them were still probationary employees, who may not have even been asked about whether they desired union representation. Moreover, new employees are presumed to support the Union in the same ratio as the employees they replace. *Colonna's Shipyard*, 293 NLRB 136 fn. 1 (1989); *Pennex Aluminum Corp*., 288 NLRB 439 (1988). More significantly, it is well settled that a showing that less than a majority of employees in the unit are members of the union is not the equivalent of showing a lack of majority support. ''The theory behind this principle is that no one can know with certainty how many employees who favor union representation do not become or remain members of the Union.'' *Pioneer Inn*, supra at 1266; *NLRB v. Walkill Valley General Hospital*, 866 F.2d 632, 637 (3d Cir. 1989); *NLRB v. Gulfmont Hotel*, 362 F.2d 588, 591 (5th Cir. 1966); *NLRB v. North American Mfg. Co*., 563 F.2d 894, 897 (8th Cir. 1977); *NLRB v. Carmichael Construction Co*., 728 F.2d 1137, 1140 (8th Cir. 1984); *Colonna's Shipyard*, supra at 140; *Weathercraft Co*., 282 NLRB 1127, 1129 (1987); *Stratford Visiting Nurses Assn*., 264 NLRB 1026 (1982). Accordingly, I conclude that Respondent cannot rely on the absence of union membership of its employees to support its position that it had a reasonably grounded doubt of the union's majority status.

Respondent's principal argument is, however, the statements by the six unit employees, which were reported to Carpenito by employee Feliciano. Before addressing the substance of the statements themselves, Respondent's first and significant problem in relying on such evidence is the source of the information. The Board with court approval has consistently attached little or no weight to reports of antiunion sentiments from employees ''to the extent that they purport to convey the sentiments of employees other than themselves. Otherwise, a few antiunion employees could provide the basis for a withdrawal of recognition when in fact there is actually insufficient basis for doubting the Union's continued majority.'' *Dalewood Rehabilitation Center*, 224 NLRB 1618, 1619–1630 (1976); *Alexander Linn Hospital Assn*., 288 NLRB 103, 109 (1988). (''The Board must view with suspicion and caution employee statements purporting to represent the views of other employees.'' Accord: *Louisiana Pacific Corp*., 283 NLRB 1079, 1080 (1987); *Westbrook Bowl*,

[6] While Respondent could also prevail if it established that the Union did in fact lose its majority status, it is clear, and Respondent does not argue otherwise, that this more stringent standard has not been met.

293 NLRB 1000, 1001 (1989), citing *Sofco, Inc*., 268 NLRB 159, 160 fn. 10 (1983), which stated that ''testimony concerning conversations directly with the employees involved . . . is much more reliable than testimony concerning merely a few employees ostensibly conveying the sentiments of their fellows.'' *Larsen Supply Co*., 289 NLRB 295 (1988) (''[u]nverified assertions of disenchantment conveyed to Respondent secondhand are insufficient to establish a reasonable good faith doubt of the Union's majority status''); *Bryan Memorial Hospital v. NLRB*, 814 F.2d 1259, 1262 (8th Cir. 1987) (''[u]nverified claims by employees that they speak for others is not a sufficient basis for an employer's reasonable good faith doubt about union support where there are no other reliable indicia of employee attitudes''); *Walkill Valley*, supra at 637 (the Board has held that hearsay on such reliance on (statements by some bargaining unit employees that a petition was supported by a majority) carries little weight).

While the above authorities indicate that the Board supported by the courts looks with disfavor on an employer's reliance on secondhand reports of employee dissatisfaction with the union to establish good-faith doubt of majority status, it does not rule out consideration of such evidence in appropriate circumstances, where it is combined with other more reliable indicia. Indeed, the Board has so found. *U-Save Food Warehouse*, 271 NLRB 710, 717 (1984); *Naylor, Type Mats*, 233 NLRB 105, 108 (1977); *J&J Drainage Products Co*., 269 NLRB 1163, 1167, 1171 (1984).

It is highly questionable whether Respondent can rely on the secondhand reports of Feliciano herein, since this evidence forms the primary if not the sole basis for its assertion of a good-faith doubt. The only authority that I have discovered, which even remotely supports Respondent's position is *J&J Drainage*, supra, in which substantial reliance was placed on statements made by a shop steward to management that employees were not interested in the union. However, since Feliciano was not a shop steward or otherwise an agent of the Union, I find *J&J Drainage*, supra, to be distinguishable, even if it is still a viable case. I note in that connection that subsequent cases have placed the continued vitality of *J&J Drainage* in serious doubt. See *Destileria Seralles, Inc*., 289 NLRB 51 (1988), in which the Board in distinguishing *J&J Drainage*, specifically observed that it was not necessarily agreeing with such case. See also *Pioneer Press*, 297 NLRB 972 (1990).

However, even if I were to permit Respondent to rely on Feliciano's secondhand reports to support its good-faith doubt, I conclude that the statements themselves were insufficient for this purpose, even had they been made directly to Carpenito by the employees. The remarks made by the employees that they would quit rather than join the Union or pay dues are not much more significant than the fact that they were not union members in the first place, which as I have noted above does not establish that they do not wish to be represented by the Union. Thus, ''it is well established that to support a reasonable doubt of Union majority support employee expressions of anti-union sentiment must . . . convey an intent not to be represented by the Union as distinguished from a desire not to become members for any of a number of reasons or an inability or unwillingness to pay dues.'' *Grand Lodge of Ohio*, 233 NLRB 143, 144 (1977); see also *ACL Corp*., 278 NLRB 474, 481 (1986); *Pioneer Inn Associates v. NLRB*, 578 F.2d 835, 840 (9th Cir. 1978); *Retired Persons Pharmacy v. NLRB*, 519 F.2d 486, 490 (2d Cir. 1975), *Premium Foods v. NLRB*, 709 F.2d 622, 631 (9th Cir. 1983) (employees withdrawing from membership in the union does not necessarily indicate that they no longer wish to be represented by it); *North American Mfg*., supra (employee membership in or financial support of a union is not an accurate gauge of union support); *Colonna's Shipyard*, supra at 139 (''[n]either expressions of lack of interest in union membership nor the number on dues check-off establishes a reasonable doubt of a union majority''; *Dalewood Rehabilitation*, supra at 1619 (a majority of employees voted to deauthorize union shop authority and less than a majority on checkoff, held insufficient to establish good-faith doubt. ''No necessary correlation exists between union membership and the number of union supporters.''); *Walkill Valley*, supra at 637 (''[t]he issue is not how many employees belong to the union or paid dues, but rather whether the majority desired union representation for purposes of collective bargaining'').

Here, the statements made by the employees establish only that they did not wish to become union members and/or to pay union dues. Since the above authorities demonstrates that such assertions do not establish that the employees are not interested in being represented by the Union, Respondent's reliance on such statements do not meet its burden of supporting its doubt of majority status by reasonably grounded objective considerations.

The fallacy of Respondent's position is exposed by Carpenito's own testimony. Thus, he testified that he felt that the employees did not want the Union because they would quit if he signed a contract with the Union. Carpenito's belief, even if sincere, that the employees did not want a union is not determinative. His subjective frame of mind is not the issue, but it is the objective considerations that form the belief that is significant. *United Supermarkets*, supra; *Celanese supra*. The fact is that the employees made no assertions about their desires for union representation or whether Respondent should bargain or sign a contract with the Union.

While Carpenito may have believed that he was required to sign a new contract containing a union-security clause, that is not so. It is well settled that the existence of a union-security clause in previous contracts does not by itself obligate the parties to include it in successive contracts. *Tubari Ltd., Inc*., 299 NLRB *Cook Bros. Enterprises*, 288 NLRB 387, 388 (1988). Indeed, unlike other terms and conditions of employment, such as payments into the funds and union access to employees, the union security and checkoff clauses do not automatically survive the contract, and an employer is free to make unilateral changes in these items, even absent an impasse in bargaining. *Bethlehem Steel Co*. 136 NLRB 1500, 1502 (1962), enf. denied on other grounds 320 F.2d 615 (3d Cir. 1963).

Therefore, while Carpenito may have feared that employees would quit, he could easily have allayed these fears by simply bargaining with the Union and insisting on not including a union-security clause in any contract that he signs with the Union. Respondent did not do so, and chose to refuse to enter into any bargaining with the Union.

Accordingly, I conclude that based on the foregoing, Respondent by refusing to continue bargaining with and with-

drawing recognition from the Union, has violated Section 8(a)(1) and (5) of the Act.

It is also not disputed that after the contract expired, Respondent denied the union representative access to its employees, in derogation of both past practice and the terms of the collective-bargaining agreement. Such action is also violative of Section 8(a)(1) and (5) of the Act, and I so find. *Colonna's Shipyard*, supra at 141; *Houston Coca-Cola Bottling Co*., 265 NLRB 766, 777–779 (2982).

Similarly, it is also admitted that Respondent, subsequent to the expiration of the contract, ceased making contributions to the Union's funds. Since there was clearly no impasse, waiver, or any other defense established, Respondent continues to be obligated to make such payments, and its failure to do so violates Section 8(a)(1) and (5) of the Act. *Chemung Contracting Co*., 291 NLRB 772, 725 (1988); *Buck Brown Contracting Co*., 272 NLRB 851, 953 (1984).

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.
2. The Union is a labor organization within the meaning of Section 2(5) of the Act.
3. By refusing on and after October 2, 1991, to bargain with the Union over the terms of a new collective-bargaining agreement, and by withdrawing recognition from the Union on and after January 1, 1992, as the exclusive majority representative in an appropriate unit, Respondent has violated Section 8(a)(1) and (5) of the Act.
4. By on and after January 1, 1992, denying union representatives reasonable access to its premises and to its employees, and by unilaterally ceasing to make contributions to the Union's fringe benefit funds, Respondent has violated Section 8(a)(1) and (5) of the Act.
5. The aforesaid unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.
6. Respondent has not otherwise violated the Act, as alleged in the complaint.

REMEDY

Having found that Respondent has violated Section 8(a)(1) and (5) of the Act, I shall recommend that it cease and desist therefrom, and take certain affirmative action necessary to effectuate the policies of the Act. I shall recommend that Respondent be ordered to make all fringe benefit contributions as provided in the expired collective-bargaining agreement, with the question of interest determined under the standards set forth in *Merryweather Optical Co*., 240 NLRB 1213 (1979). It is also appropriate to recommend that Respondent make whole the unit employees for any losses that they may suffered from Respondent's failure to make such contributions, in the manner set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 fn. 2 (1989), enfd. mem. 661 F.2d 940 (9th Cir. 1981), with interest provided in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[7]

ORDER

The Respondent, R.J.B. Knits, Perth Amboy, New Jersey, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Withdrawing recognition from, and refusing to bargain collectively with, Local 149, International Ladies Garment Workers Union, AFL–CIO, as the exclusive bargaining representative of employees in the following appropriate unit:

> All non-supervisory production, maintenance, packing, shipping, and trucking employees employed by Respondent, including regular and trial period employees, but excluding office clerical and managerial employees, guards and supervisors as defined in the Act.

(b) Denying agents and representatives of the Union, reasonable access to the premises and its employees.

(c) Unilaterally ceasing to make contributions to the Union's fringe benefit funds as provided in the collective-bargaining agreement between the parties which expired on December 31, 1991.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request bargain collectively with the Union as the exclusive bargaining representative of its employees in the aforesaid unit and, if an understanding is reached, embody the same in a signed agreement.

(b) Make all fringe benefit contributions as provided in the collective-bargaining agreement which expired on December 31, 1991, and make whole the unit employees in the manner set forth in the remedy section of this decision by reimbursing them with interest, for any losses they may have suffered as a result of Respondent's failure to make the various fund contributions.

(c) Notify the Union in writing that its agents may have access to Respondent's premises and employees have been restored pursuant to the terms of article XXI of its collective-bargaining agreement which expired on December 31, 1991.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

[7] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(e) Post at its facility in Perth Amboy, New Jersey, copies of the attached notice marked ''Appendix.''[8] Copies of the notice, on forms provided by the Regional Director for Region 22, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees and members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[8] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''